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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

12 WASHINGTON TOXICS COALITION,
13 NORTHWEST COALITION FOR
14 ALTERNATIVES TO PESTICIDES,
15 PACIFIC COAST FEDERATION OF
16 FISHERMEN'S ASSOCIATIONS, and
17 INSTITUTE FOR FISHERIES RESOURCES,

Plaintiffs,

vs.

ENVIRONMENTAL PROTECTION AGENCY,
and MIKE LEAVITT

Defendants.

vs.

AMERICAN CROP PROTECTION ASSOC. et al

Intervenor-Defendants

)
)
) Case No. C01-0132
)
) **FEDERAL DEFENDANTS'**
) **RESPONSE TO PLAINTIFFS'**
) **FILING OF MATERIALS FOR**
) **STATUS CONFERENCE**

FEDERAL DEFENDANTS' RESPONSE TO PLAINTIFFS'
FILING OF MATERIALS FOR STATUS CONFERENCE

Case No. C01-0132

Environment & Natural Resources Div.
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1 The plaintiffs have filed a pleading and declaration purportedly in an attempt to
2 demonstrate to the Court that they “negotiated in good faith and made every effort to move the
3 parties in the direction of an agreed-upon order.” The plaintiffs filing and supporting declaration
4 to demonstrate a lack of bad faith are irrelevant, since there has never been any allegation that
5 any party, either plaintiffs, defendants, or intervenor-defendants, engaged in bad faith. The
6 federal defendants and the intervenor defendants have not alleged or even suggested bad faith by
7 the plaintiffs, nor has this Court suggested bad faith, or ordered plaintiffs to show cause why they
8 have not acted in bad faith. Accordingly, since there has been neither an argument by the
9 defendants, nor an order by the Court on the issue of bad faith, plaintiffs filing to demonstrate
10 their good faith is irrelevant and improper. Therefore, the Court should disregard the plaintiffs’
11 filing, and it should be struck.

12 Further, the plaintiffs’ selective filing of certain communications, while excluding others,
13 does not present a complete portrayal of the parties’ interaction while attempting to negotiate this
14 matter. If this Court determines that the parties’ exercise of good faith during negotiations is an
15 issue that it wishes to consider, there are at least eleven other written communications that the
16 federal defendants would file to present the Court with a more complete picture of the parties’
17 conduct. Absent such inquiry by the Court into the parties’ good faith, and absent any allegation
18 of any parties’ bad faith in this matter, the federal defendants have not filed these with the Court.
19 Should the Court wish to proceed with such an inquiry, the federal defendants would then seek
20 leave to file such documents.

21 Plaintiffs filing and declaration also impermissibly discloses to the Court the information
22 and statements made in the course of the parties negotiating and attempting to settle their
23 differences over the order. In this litigation, the Court serves as both the trier of fact and law,
24 since there is no jury. It is improper for a party to disclose statements made in negotiations
25 among the parties to the Court presiding over the dispute between the parties because such
26 evidence is inadmissible. Fed. R. Evid. 408 (“Evidence of conduct or statements made in
27

1 compromise negotiations is likewise not admissible.”). See, Folb v. Motion Picture Industry
2 Pension & Health Plans, 16 F.Supp.2d 1164, 1171 (C.D. Cal. 1998); Fiberglass Insulators v.
3 Dupuy, 856 F.2d 652, 654-55 (4th Cir. 1988). Particularly here, where the involved parties’ good
4 faith has not been raised as an issue, the conduct and statements made amongst them in the
5 course of settlement is not admissible before the Court. Therefore, plaintiffs’ filing should be
6 disregarded and struck by the Court.

7
8 Respectfully submitted,

9
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15 /s/ Date: 12/5/03
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